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SENATE BILL 995

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

CYNTHIA NAVA

AN ACT

RELATING TO HOUSING DISCRIMINATION; ENACTING THE FAIR HOUSING ACT; PROVIDING PENALTIES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1 through 35 of this act may be cited as the "Fair Housing Act".

Section 2. [NEW MATERIAL] PURPOSE AND INTERPRETATION. --

A. The purposes of the Fair Housing Act are to:

(1) provide for fair housing practices in New Mexico;

(2) create a procedure for investigating, conciliating and resolving complaints of discriminatory housing practices;

(3) provide rights and remedies substantially

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1 equivalent to those granted under federal law; and

2 (4) encourage local governments in New Mexico
3 to enact and enforce local fair housing ordinances.

4 B. Interpretation of the Fair Housing Act shall be
5 based on the following policies recognized by the legislature:

6 (1) the specific provisions of the Fair Housing
7 Act addressing discriminatory housing practices shall control
8 over any general laws governing discriminatory practices,
9 including the Human Rights Act; and

10 (2) the rights, remedies and procedures set
11 forth in the Fair Housing Act shall not be interpreted to be in
12 derogation of any rights, remedies or procedures under federal
13 law or in derogation of rights and remedies available at common
14 law.

15 Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the
16 Fair Housing Act:

17 A. "aggrieved person" means any person who:

18 (1) claims to have been injured by a
19 discriminatory housing practice; or

20 (2) believes that such person will be injured
21 by a discriminatory housing practice that is about to occur;

22 B. "commission" means the human rights commission;

23 C. "complainant" means a person who files a
24 complaint pursuant to Section 17 of the Fair Housing Act;

25 D. "complaint" means a succinct statement of

1 grievances stating a factual connection to a discriminatory
2 housing practice filed pursuant to Section 17 of the Fair
3 Housing Act;

4 E. "conciliation" means the attempted resolution of
5 issues raised by a complaint or by the investigation of a
6 complaint, through informal negotiations involving an aggrieved
7 person, the respondent and the division;

8 F. "conciliation agreement" means a written
9 agreement setting forth the resolution of the issues in
10 conciliation;

11 G. "director" means the director of the division;

12 H. "disability" means a physical, developmental or
13 mental impairment that substantially limits one or more of a
14 person's major life activities or a documented medical condition
15 that poses the substantial likelihood of resulting in a life-
16 limiting impairment; however, "disability" does not mean current
17 illegal use of or addiction to a controlled substance as defined
18 in the Controlled Substances Act. A person is disabled if:

19 (1) a medical or other verifiable record exists
20 stating that an individual has a life-limiting impairment; or

21 (2) an individual is regarded as having a life-
22 limiting impairment;

23 I. "discriminatory housing practice" means an act
24 prohibited by Sections 6 through 13 of the Fair Housing Act;

25 J. "division" means the human rights division of the

1 labor department;

2 K. "dwelling" means:

3 (1) any building, structure, part or unit of a
4 building that is occupied as or designed or intended for
5 occupancy as a residency by one or more persons; or

6 (2) any vacant land that is offered for sale or
7 lease for the construction or location of a building, structure
8 or part of a building or structure described by Paragraph (1) of
9 this subsection;

10 L. "familial status" means a relationship where a
11 person is:

12 (1) pregnant;

13 (2) domiciled with a minor and is:

14 (a) the parent, legal custodian or foster
15 care custodian of the minor; or

16 (b) designated by the minor's parent,
17 with the written permission of the parent, to domicile with the
18 minor; or

19 (3) in the process of obtaining legal custody
20 of a minor.

21 M. "major life activity" means a function commonly
22 performed by human beings in daily life, including caring for
23 oneself, performing manual tasks, walking, seeing, hearing,
24 speaking, breathing, learning and working;

25 N. "multifamily dwelling" means:

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1 (1) buildings consisting of four or more units
2 if the buildings have one or more elevators; or

3 (2) ground floor units in other buildings
4 consisting of four or more units;

5 O. "person" means an individual, partnership,
6 association, organization, corporation, joint venture, legal
7 representative, trustee, receiver or the state and all of its
8 subdivisions;

9 P. "rent" means to lease, sublease, let or otherwise
10 grant for consideration the right to occupy a dwelling unit not
11 owned by the occupant regardless of the term of the granted
12 occupancy;

13 Q. "respondent" means a person accused of a
14 discriminatory housing practice in a complaint filed pursuant to
15 the provisions of the Fair Housing Act, including a person
16 identified as an additional or substitute respondent pursuant to
17 Section 19 of that act;

18 R. "secretary" means the secretary of labor;

19 S. "serve" or "served", when used in reference to a
20 document under the Fair Housing Act, means personally delivered
21 or mailed by certified mail, return receipt requested;

22 T. "tenant" means a person who rents a dwelling or a
23 room in a dwelling; and

24 U. "urgent medical condition" means any medical
25 condition that poses a serious threat to the life of the person

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1 with the medical condition, where the existence of the medical
2 condition is supported by objective medical evidence.

3 Section 4. [NEW MATERIAL] RELATIONSHIP TO LOCAL LAWS. --

4 The Fair Housing Act does not limit the applicability of
5 reasonable and nondiscriminatory state or local laws that
6 restrict the maximum number of occupants permitted to occupy a
7 dwelling or that relate to health or safety standards.

8 Section 5. [NEW MATERIAL] EXEMPTIONS--REGULATIONS. --

9 A. The Fair Housing Act shall not apply to any
10 individual or his authorized representative in renting rooms or
11 units in dwellings containing living quarters occupied or
12 intended to be occupied by no more than four persons or groups
13 of persons living independently of each other, if the owner
14 actually maintains and occupies one of such living quarters as
15 his residence.

16 B. The Fair Housing Act does not prohibit a
17 religious organization, association or society, or a nonprofit
18 institution or organized operated, supervised or controlled by
19 or in conjunction with a religious organization, association or
20 society, unless membership in the religion is restricted because
21 of race, color or national origin, from:

22 (1) limiting the sale, rental or occupancy of
23 dwellings that it owns or operates for other than a commercial
24 purpose to persons of the same religion; or

25 (2) giving preference to persons of the same

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1 religion.

2 C. The Fair Housing Act does not prohibit a private
3 club, which is not in fact open to the public, that, as an
4 incident to its primary purpose, provides lodging that it owns
5 or operates for other than a commercial purpose from limiting
6 the rental or occupancy of that lodging to its members or from
7 giving preference to its members.

8 D. The provisions of the Fair Housing Act shall not
9 apply to any single-family house sold or rented by a private
10 individual owner, provided that:

11 (1) the owner does not own more than three
12 single-family houses at any one time;

13 (2) in the case of the sale of any single-
14 family house by an owner not residing in the house at the time
15 of the sale or who was not the most recent resident of the house
16 prior to the sale, the exemption granted by this subsection
17 shall apply only with respect to one sale within any twenty-four
18 month period;

19 (3) the owner does not own any interest in, nor
20 is there owned or reserved on the behalf of the owner, under any
21 express or voluntary agreement, title to or any right to all or
22 a portion of the proceeds from the sale or rental of more than
23 three single-family houses at any one time; and

24 (4) the single-family house is sold or rented:

25 (a) without the use in any manner of the

1 sales or rental facilities or the sales or rental services of
2 any real estate broker or agent or of any employee or agent of
3 any broker, agent or person; or

4 (b) without the publication, posting or
5 mailing, after notice, of any advertisement or written notice in
6 violation of the Fair Housing Act.

7 E. Nothing contained in Subsection D of this section
8 shall prohibit the use of attorneys, escrow agents, title
9 companies and other professional assistance as necessary to
10 perfect or transfer the title to the single-family house.

11 F. The provisions of the Fair Housing Act relating
12 to familial status do not apply to housing for older persons,
13 where such housing:

14 (1) is provided under a state or federal
15 program that is specifically designed and operated to assist
16 elderly persons;

17 (2) is intended for, and solely occupied by,
18 persons sixty-two years of age or older; or

19 (3) is intended for, and operated for occupancy
20 by, at least one person fifty-five years of age or older per
21 unit.

22 G. The secretary shall, within one hundred eighty
23 days from the effective date of the Fair Housing Act, develop
24 regulations for determining whether housing qualifies for the
25 exemption in Paragraph (3) of Subsection F of this section.

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1 H. Paragraphs (2) and (3) of Subsection F of this
2 section shall not disqualify housing from the exemption in this
3 section because there are persons living in such housing who do
4 not meet the age requirements of those paragraphs as of the
5 effective date of the Fair Housing Act, if all new occupants of
6 such housing meet the age requirements of those paragraphs.

7 I. Paragraphs (2) and (3) of Subsection F of this
8 section shall not disqualify housing from the exemption in this
9 section with regard to unoccupied units if the units are
10 reserved for occupancy by persons who meet the age requirements
11 of those paragraphs.

12 J. Paragraphs (2) and (3) of Subsection F of this
13 section shall not disqualify housing from the exemption in this
14 section with regard to units occupied by employees of the
15 housing and family members residing in the same unit who are
16 under sixty-two years of age provided they perform substantial
17 duties directly related to the management or maintenance of the
18 housing.

19 Section 6. [NEW MATERIAL] DISCRIMINATORY HOUSING
20 PRACTICES--SALE OR RENTAL. --

21 A. A person shall not refuse because of race, color,
22 religion, sex, disability, familial status, ancestry or national
23 origin, to:

24 (1) negotiate for the sale or rent of a
25 dwelling with a person;

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1 (2) sell or rent to a person after receiving a
2 bona fide offer; or

3 (3) make available or withhold a dwelling from
4 any person.

5 B. A person shall not discriminate against any
6 person because of race, color, religion, sex, disability,
7 familial status, ancestry or national origin:

8 (1) in the terms, conditions or privileges of
9 sale or rent of a dwelling; or

10 (2) in the services or facilities provided in
11 connection with the sale or rent of a dwelling.

12 Section 7. [NEW MATERIAL] DISCRIMINATORY HOUSING
13 PRACTICES--PUBLICATION. --A person shall not make, print or
14 publish or cause to be made, printed or published, any notice,
15 statement or advertisement with respect to the sale or rent of a
16 dwelling that indicates any current preference, limitation or
17 discriminatory restrictions based upon race, color, religion,
18 sex, disability, familial status, ancestry or national origin or
19 that indicates an intention to make a preference, limitation or
20 discriminatory restriction apply in the future.

21 Section 8. [NEW MATERIAL] DISCRIMINATORY HOUSING
22 PRACTICES--RESTRICTION OF INSPECTION. --A person shall not
23 represent to any person because of race, color, religion, sex,
24 disability, familial status, ancestry or national origin that a
25 dwelling is not available for inspection for sale or rent when

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1 the dwelling is available for inspection.

2 Section 9. [NEW MATERIAL] DISCRIMINATORY HOUSING
3 PRACTICES--RESIDENTIAL REAL ESTATE RELATED TRANSACTIONS--
4 INDUCEMENT TO SELL OR RENT. --

5 A. A person whose business includes engaging in
6 residential real estate related transactions shall not
7 discriminate against a person because of race, color, religion,
8 sex, disability, familial status, ancestry or national origin:

9 (1) in making a residential real estate related
10 transaction available; or

11 (2) in the terms or conditions of a real estate
12 related transaction.

13 B. As used in this section, "residential real estate
14 related transaction" means:

15 (1) making or purchasing loans or providing
16 other financial assistance to purchase, construct, improve,
17 repair or maintain a dwelling;

18 (2) making or purchasing loans or providing
19 other financial assistance to secure residential real estate; or

20 (3) selling, brokering or appraising
21 residential real estate property.

22 C. Nothing in this section prohibits a person
23 engaged in the business of furnishing appraisals of real
24 property from taking into consideration factors other than race,
25 color, sex, disability, familial status, ancestry or national

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1 origin.

2 D. A person shall not, for profit, induce or attempt
3 to induce a person to sell or rent a dwelling by representations
4 regarding the entry or prospective entry into a neighborhood of
5 a person of a particular race, color, religion, sex, disability,
6 familial status, ancestry or national origin.

7 Section 10. [NEW MATERIAL] DISCRIMINATORY HOUSING
8 PRACTICES--ACCESS TO BROKERAGE SERVICES.--

9 A. A person shall not deny to any person because of
10 race, color, religion, sex, disability, familial status,
11 ancestry or national origin access to or membership or
12 participation in a multiple listing service, real estate
13 broker's organization or other service, organization or facility
14 relating to the business of selling or renting dwellings.

15 B. A person shall not discriminate against any
16 person because of race, color, religion, sex, disability,
17 familial status, ancestry or national origin in the terms or
18 conditions of access to or membership or participation in a
19 multiple listing service, real estate broker's listing service
20 or other service, organization or facility relating to the
21 business of selling or renting dwellings.

22 Section 11. [NEW MATERIAL] DISCRIMINATORY HOUSING
23 PRACTICES--UNLAWFUL INTERFERENCE OF RIGHTS.--It is unlawful to
24 coerce, intimidate, threaten or interfere with any person in the
25 exercise or enjoyment of, or on account of having exercised or

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1 enjoyed, or on account of having aided or encouraged any other
2 person in the exercise or enjoyment of, any right granted or
3 protected by the Fair Housing Act.

4 Section 12. [NEW MATERIAL] DISCRIMINATORY HOUSING
5 PRACTICES BECAUSE OF DISABILITY--SPECIFIC PROVISIONS--
6 EXCEPTIONS.--

7 A. For purposes of this section, which prohibits
8 discriminatory housing practices against a person because of a
9 disability, "person" includes:

10 (1) a person residing in or intending to reside
11 in a dwelling made available for sale or rent after it is sold,
12 rented or made available; and

13 (2) any person associated with that person as a
14 guest.

15 B. It is unlawful to discriminate against a person
16 in housing practices because of a disability, including:

17 (1) refusing to permit, at the expense of the
18 person, reasonable modifications of existing premises occupied
19 or to be occupied by the person if the modifications may be
20 necessary to afford the person full enjoyment of the premises;
21 provided that, in the case of a rental, the landlord may, where
22 it is reasonable to do so, condition permission for the
23 modifications on the renter agreeing to restore the interior of
24 the premises to the condition that existed before the
25 modifications, reasonable wear and tear excepted; and

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1 (2) refusing to make reasonable accommodations
2 in rules, policies, practices or services, when the
3 accommodations may be necessary to afford the person equal
4 opportunity to use and enjoy a dwelling.

5 C. This section does not require that a dwelling be
6 made available to a person whose tenancy would constitute a
7 direct threat to the health or safety of other individuals or
8 whose tenancy would result in substantial physical damage to the
9 property of others.

10 Section 13. [NEW MATERIAL] DISCRIMINATORY HOUSING
11 PRACTICES BECAUSE OF DISABILITY IN CERTAIN MULTIFAMILY
12 DWELLINGS-- DEFINITIONS-- METHODS OF COMPLIANCE. --

13 A. It is a discriminatory housing practice to design
14 or construct any multifamily dwelling available for occupancy
15 after March 13, 1991 that fails to meet the accessibility
16 standards of this section.

17 B. "Accessibility standards" means standards that
18 meet the requirements of 42 U.S.C. Section 3604(f)(3)(C), as
19 amended, and the federal regulations issued pursuant to that
20 section.

21 C. Compliance with the appropriate requirements of
22 either the American national standard for buildings and
23 facilities providing accessibility and usability for disabled
24 people, commonly cited as "ANSI A 117.1", or Chapter 31 of the
25 Uni form Building Code satisfies the requirements of Subsection B

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1 of this section.

2 Section 14. [NEW MATERIAL] POWERS AND DUTIES OF THE
3 SECRETARY. --The secretary shall adopt, promulgate, amend and
4 repeal rules and regulations to carry out the provisions of the
5 Fair Housing Act.

6 Section 15. [NEW MATERIAL] POWERS AND DUTIES OF THE
7 COMMISSION. --The commission shall:

8 A. recommend to the secretary any rules or
9 regulations, or repeal or amendment to the rules and
10 regulations, that the commission deems necessary for the
11 efficient and expeditious conduct of hearings on complaints
12 alleging discriminatory housing practices;

13 B. maintain a hearing docket of all complaints on
14 which administrative hearings have been requested either by a
15 complainant or respondent, and schedule hearings in such a
16 manner that no such pending request for hearing remain on the
17 docket for more than one hundred twenty days without the consent
18 of both the complainant and the respondent;

19 C. ensure that final administrative action on a
20 complaint filed under the Fair Housing Act be completed not
21 later than one year after the complaint was filed;

22 D. after January 1, 1998 maintain a listing of
23 commission-approved hearing officers in each judicial district
24 in the state. Such hearing officers shall meet the
25 qualifications set by the commission and agree to serve as a

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1 hearing officer on a fee per case rate set by the commission;
2 and

3 E. unless the complainant and the respondent agree
4 otherwise, hold hearings on complaints alleging discriminatory
5 housing practices at the site of the district or magistrate
6 court in the county where the discriminatory housing practice is
7 alleged to have occurred.

8 Section 16. [NEW MATERIAL] POWERS AND DUTIES OF THE
9 DIVISION. --The division shall:

10 A. provide such clerical and administrative support
11 to the commission as the secretary shall direct to enable the
12 commission promptly and equitably to adjudicate administrative
13 complaints under the Fair Housing Act;

14 B. accept, efficiently investigate and conciliate
15 complaints on discriminatory housing practices under the
16 procedures set out in the Fair Housing Act;

17 C. have the power to issue subpoenas and subpoenas
18 duces tecum in the name of the commission to aid the division in
19 the investigation of complaints under the Fair Housing Act;

20 D. do all things necessary to enable the secretary
21 to contract with the United States department of housing and
22 urban development to defray the costs of the division's
23 investigation and conciliation and the commission's costs of
24 administratively adjudicating complaints of discriminatory
25 housing practices under the Fair Housing Act; and

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1 E. cooperate with and provide technical assistance
2 to all local governmental agencies that investigate complaints
3 of discriminatory housing practices and defer them jurisdiction
4 over investigation and conciliation of such complaints to local
5 agencies whenever the division and the local agency have a
6 written agreement providing for the terms of such a deferral;
7 provided that such local agencies are empowered to act under
8 local ordinances prohibiting housing discrimination, and where
9 such a deferral would not violate the agreements between the
10 division and the United States department of housing and urban
11 development.

12 Section 17. [NEW MATERIAL] COMPLAINT--DISCRIMINATORY
13 HOUSING PRACTICES. --

14 A. An aggrieved person, or a member of the
15 commission who has information that a discriminatory housing
16 practice has occurred, may file a complaint with the division
17 alleging the discriminatory housing practice not later than one
18 hundred eighty days after an alleged discriminatory housing
19 practice has occurred or terminated. The complaint shall be in
20 writing in a form prescribed by the division and may be amended
21 at any time. The division shall investigate all complaints
22 alleging discriminatory housing practices not later than thirty
23 days after the complaint is filed. After completion of the
24 division's investigation, the director shall make available to
25 the aggrieved person and the respondent information derived from

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1 the investigation and the final investigation report relating to
2 that investigation at any time.

3 B. The division, upon receipt of a complaint, shall:

4 (1) give the aggrieved person notice that the
5 complaint has been received;

6 (2) advise the aggrieved person of the time
7 limits and choice of forums pursuant to the Fair Housing Act;
8 and

9 (3) no later than the tenth day after receipt
10 of the complaint or the identification of an additional
11 respondent pursuant to Section 19 of the Fair Housing Act serve
12 on each respondent a notice identifying the alleged
13 discriminatory housing practice and advising the respondent of
14 the procedural rights and obligations of a respondent under that
15 act together with a form for answering the complaint and a copy
16 of the original complaint.

17 Section 18. [NEW MATERIAL] ANSWER--COMPLAINT. --Not later
18 than the thirtieth day after the receipt of the notice and copy
19 of the original complaint served pursuant to Paragraph (3) of
20 Subsection B of Section 17 of the Fair Housing Act, a respondent
21 may file an answer to the complaint. The answer shall be in
22 writing in a form prescribed by the division and may be amended
23 at any time. An answer shall not stop the investigation of the
24 complaint.

25 Section 19. [NEW MATERIAL] ADDITIONAL OR SUBSTITUTE

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1 RESPONDENT. --The division may join a person not named in the
2 complaint as an additional or substitute respondent if in the
3 course of the investigation the division determined that the
4 person should be accused of a discriminatory housing practice.
5 The division shall notify the respondent joined under this
6 section according to the provisions of Paragraph (3) of
7 Subsection B of Section 17 of the Fair Housing Act and shall
8 provide an explanation of the basis for the determination that
9 the person is properly joined as a respondent.

10 Section 20. [NEW MATERIAL] CONCILIATION. --

11 A. The division shall engage, to the extent
12 feasible, in conciliation with respect to the complaint during
13 the period beginning with the division's receipt of the
14 complaint and ending with the filing of a charge or dismissal by
15 the director. The division shall maintain a record of its
16 conciliation efforts for each complaint.

17 B. A conciliation agreement:

18 (1) is an agreement between a respondent and a
19 complainant and is subject to review and comment by the
20 division;

21 (2) may provide for binding arbitration or
22 other method of dispute resolution. A dispute resolution that
23 results from a conciliation agreement may authorize relief,
24 including monetary relief and attorney fees; and

25 (3) shall be made public unless the complainant

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1 and the respondent agree otherwise, and the director determines
2 that the disclosure is not necessary to further the purposes of
3 the Fair Housing Act.

4 C. Nothing said or done in the course of
5 conciliation may be made public or used as evidence in a
6 subsequent proceeding under the Fair Housing Act or under any
7 local criminal ordinance prohibiting discriminatory housing
8 without the written consent of the persons concerned.

9 Section 21. [NEW MATERIAL] INVESTIGATION REPORT. -- The
10 division shall prepare a final investigation report, which may
11 be amended if additional evidence is discovered. The report
12 shall include:

13 A. the names and dates of contacts with witnesses;

14 B. a summary of correspondence and other contacts
15 with the aggrieved person and the respondent showing all the
16 dates of the correspondence and contacts;

17 C. a summary description of other pertinent records;

18 D. a summary of witness statements; and

19 E. answers to interrogatories.

20 Section 22. [NEW MATERIAL] REASONABLE CAUSE
21 DETERMINATION. --

22 A. The director shall determine, based upon the
23 investigation report prepared pursuant to Section 21 of the Fair
24 Housing Act, whether reasonable cause exists to believe that a
25 discriminatory housing practice has occurred or is about to

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1 occur. The director shall make his determination not later than
2 one hundred days after the date the complaint is filed unless it
3 is impracticable to make the determination or unless the
4 director has approved a conciliation agreement relating to the
5 complaint. If it is impracticable to make the termination
6 within the time period, the director shall notify the
7 complainant, the respondent and the commission in writing
8 stating the reason for the delay.

9 B. In the case of complaint filed by or on behalf of
10 a person who has an urgent medical condition and has notified
11 the director in writing of the objective medical findings
12 evidencing that condition, the director shall make the
13 determination whether reasonable cause exists for the complaint
14 and shall attempt any conciliation efforts within ninety days of
15 the filing of the written complaint or such notification,
16 whichever occurs last.

17 Section 23. [NEW MATERIAL] ISSUANCE OF CHARGE. --If the
18 director determines that reasonable cause exists to believe that
19 a discriminatory housing practice has occurred or is about to
20 occur, the director shall, except as provided in Sections 32 and
21 34 of the Fair Housing Act, immediately issue a charge on behalf
22 of the aggrieved person. The director shall send a copy of the
23 charge, together with a notice of the right to request an
24 administrative hearing to the complainant and the respondent. A
25 charge issued pursuant to this section shall:

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1 A. consist of a short and plain statement of the
2 facts on which the director has found reasonable cause to
3 believe that a discriminatory housing practice has occurred or
4 is about to occur;

5 B. be based on the final investigation report; and

6 C. not be limited to the facts or grounds alleged in
7 the complaint.

8 Section 24. [NEW MATERIAL] COMPLAINT--DISMISSAL.--

9 A. The director may dismiss the complaint if he
10 determines that:

11 (1) no reasonable cause exists to believe that
12 a discriminatory housing practice has occurred or is about to
13 occur; or

14 (2) a discriminatory housing practice occurred
15 but that it did not constitute a material violation of the Fair
16 Housing Act and that the respondent made a firm offer of
17 restitution to the aggrieved person.

18 B. Upon dismissal of the complaint, the director
19 shall send notice to the complainant and the respondent of such
20 dismissal, and the notice shall clearly and conspicuously advise
21 the complainant of the right to file a civil action pursuant to
22 Section 33 of the Fair Housing Act.

23 C. Dismissal of a complaint shall constitute final
24 administrative action for the purposes of judicial review
25 pursuant to Section 29 of the Fair Housing Act.

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1 Section 25. ~~[NEW MATERIAL]~~ ELECTION TO ASSERT CLAIMS--
2 CIVIL ACTION AND RELIEF--ADMINISTRATIVE HEARING. --

3 A. If the director issues a charge pursuant to
4 Section 23 of the Fair Housing Act, either the complainant or
5 the respondent may elect to have the claims asserted in that
6 charge decided in a civil action under Section 33 of the Fair
7 Housing Act. The election must be made not later than twenty
8 days after the receipt of the electing person of service of the
9 charge.

10 B. If any election is made under Subsection A of
11 this section, the director shall authorize, and not later than
12 thirty days after the election is made, the attorney general
13 shall commence and maintain a civil action on behalf of the
14 aggrieved person in a New Mexico state district court, seeking
15 relief under this section. Venue for civil action shall be in
16 the county where the alleged discriminatory housing practice
17 occurred. Any aggrieved person with respect to the issues to be
18 determined in regard to the civil action may intervene as of
19 right in that civil action.

20 C. In a civil action under Subsection A of this
21 section, if the court finds that a discriminatory housing
22 practice has occurred or is about to occur, the court may grant
23 as relief any relief that a court could grant with respect to
24 the discriminatory housing practice in a civil action under
25 Section 33 of the Fair Housing Act. Any relief so granted that

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1 would accrue to an aggrieved person in a civil action commenced
2 by that aggrieved person under Section 33 of the Fair Housing
3 Act shall also accrue to that aggrieved person in a civil action
4 under this subsection. If monetary relief is sought for the
5 benefit of the aggrieved person who does not intervene in the
6 civil action, the court shall not award such relief if that
7 aggrieved person has not complied with discovery orders entered
8 by the court.

9 D. If an election is not made under Subsection A of
10 this section, the parties shall be given an opportunity for an
11 administrative hearing with respect to the charge.

12 E. Upon receipt of a request for hearing under
13 Subsection D of this section, the commission shall notify the
14 director, the complainant and the respondent that a request for
15 hearing has been received and a notice shall set the time and
16 place of the hearing. If the commission is unable to schedule
17 the hearing within one hundred twenty days from the receipt of
18 the request for hearing, the notice sent by the commission shall
19 include notice of the right to private remedies under Section 33
20 of the Fair Housing Act.

21 Section 26. [NEW MATERIAL] ADMINISTRATIVE HEARING--
22 COMMISSION PANEL. --

23 A. All administrative hearings requested pursuant to
24 Section 25 of the Fair Housing Act shall be held before a panel
25 of three commissioners of the commission.

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1 B. The secretary shall, on or before October 1,
2 1997, promulgate rules and regulations for the conduct of
3 hearings before the commission panel pursuant to the Fair
4 Housing Act.

5 C. The hearing shall be conducted as expeditiously
6 and inexpensively as possible, consistent with the needs and
7 rights of the parties to obtain a fair hearing and a complete
8 record. The rules of evidence shall not apply. A decision of
9 the commission panel shall be based upon substantial evidence
10 that would be otherwise admissible in a civil proceeding in the
11 district court.

12 D. The hearing shall be tape recorded, and a copy of
13 the tape shall be maintained by the commission and be available
14 for review and copying by the director, the complainant or the
15 respondent.

16 E. The commission panel's decision following the
17 administrative hearing shall include findings of fact,
18 conclusions of law and an award. The decision of the commission
19 panel shall be in writing and shall be issued no later than
20 thirty days after the date on which the administrative hearing
21 concluded.

22 F. The commission panel's decision shall constitute
23 final administrative action by the commission ten days after the
24 date the commission panel issues its decision.

25 Section 27. [NEW MATERIAL] ADMINISTRATIVE HEARING--

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1 HEARING OFFICER- - HEARING PROCEDURES. - -

2 A. An administrative hearing shall be conducted
3 before a hearing officer approved by the commission pursuant to
4 regulations promulgated by the secretary. Each party may appear
5 in person, be represented by counsel, present evidence, cross-
6 examine witnesses and obtain the issuance of subpoenas from the
7 commission.

8 B. The hearing shall be conducted as expeditiously
9 and inexpensively as possible, consistent with the needs and
10 rights of the parties to obtain a fair hearing and a complete
11 record. The rules of evidence shall not apply. A decision of
12 the hearing officer shall be based upon substantial evidence
13 that would be otherwise admissible in a civil proceeding in the
14 district court.

15 C. Discovery in administrative proceedings shall be
16 conducted as expeditiously and inexpensively as possible,
17 consistent with the need of all parties to obtain relevant
18 evidence. The commission may recommend regulations for
19 promulgation by the secretary on discovery process in
20 administrative hearings.

21 D. The proceedings shall be tape recorded, and a
22 copy of the tape shall be maintained by the commission and be
23 available for review and copying by the director, the
24 complainant or the respondent.

25 E. The decision of the hearing officer shall include

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1 findings of fact, conclusions of law and an award. All
2 decisions of the hearing officer shall be in writing and shall
3 be issued no later than thirty days after the date on which the
4 administrative hearing concluded. If the hearing officer finds
5 that the respondent has not engaged or is not about to engage in
6 a discriminatory housing practice, the hearing officer shall
7 issue a decision dismissing the charge.

8 F. The decision of a hearing officer shall
9 constitute final administrative action by the commission fifteen
10 days after the decision's issuance, unless either party to the
11 hearing files a written objection within that time. Written
12 objections shall be reviewed by the commission, and such review
13 shall constitute final administrative action by the commission.

14 G. The commission shall cause the decision, or the
15 determination of the commission on any review of the decision
16 under Subsection F of this section, to be served on each
17 aggrieved person and each respondent in the proceeding.

18 Section 28. [NEW MATERIAL] ADMINISTRATIVE REMEDIES. --

19 A. If after the administrative hearing the
20 commission panel or the hearing officer determines in its
21 decision that a respondent has engaged in or is about to engage
22 in a discriminatory housing practice, the award made in the
23 decision may include actual damages, reasonable attorney fees,
24 court costs and other injunctive or equitable relief.

25 B. Upon a written finding that a respondent

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1 knowingly or willfully committed a discriminatory housing
2 practice, a decision in an administrative hearing under the Fair
3 Housing Act may include an award of a civil penalty against the
4 respondent:

5 (1) in an amount not exceeding ten thousand
6 dollars (\$10,000) if the respondent has not been adjudged to
7 have committed any prior discriminatory housing practice;

8 (2) in an amount not exceeding twenty-five
9 thousand dollars (\$25,000) if the respondent has been adjudged
10 to have committed one other discriminatory housing practice
11 during the five-year period prior to the date of the issuance of
12 the current charge; or

13 (3) in an amount not exceeding fifty thousand
14 dollars (\$50,000) if the respondent has been adjudged to have
15 committed two or more discriminatory housing practices during
16 the seven-year period prior to the date of the issuance of the
17 current charge.

18 Section 29. [NEW MATERIAL] JUDICIAL REVIEW -
19 ENFORCEMENT. --A party aggrieved by a final administrative action
20 by the commission may file a petition for judicial review as
21 provided by the Administrative Procedures Act.

22 Section 30. [NEW MATERIAL] ENFORCEMENT OF AWARD. --A party
23 to an administrative hearing may bring an action in the district
24 court for the county in which the alleged discriminatory housing
25 practice occurred to enforce the decision and award of the

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1 commission. The action shall be brought within six months of
2 the date of the decision and award made pursuant to the
3 administrative hearing.

4 Section 31. [NEW MATERIAL] ACTION FOR ENFORCEMENT--
5 ATTORNEY GENERAL. --

6 A. The attorney general may commence a civil action
7 in the name of the state when:

8 (1) the attorney general has reasonable cause
9 to believe that:

10 (a) the acts of the respondent, either
11 specified in a complaint by an aggrieved person or identified
12 through investigation by the division, constitute a pattern of
13 discriminatory housing practice, in that they involve more than
14 one occurrence of the same type of discriminatory housing
15 practice or they will result in harm to three or more aggrieved
16 persons;

17 (b) a discriminatory housing practice may
18 occur unless temporary and preliminary injunctive relief is
19 sought pursuant to the Rules of Civil Procedure for the District
20 Courts;

21 (c) either parties or witnesses subject
22 to subpoenas issued by the commission have engaged in contumacy
23 or refusal to obey a subpoena of the commission, and should
24 thereby be subject to the contempt powers of the district court;
25 or

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1 (d) a separate action is necessary for
2 enforcement of the terms of the conciliation agreement or of the
3 decision in an administrative hearing pursuant to the Fair
4 Housing Act; or

5 (2) an election has been made pursuant to
6 Section 25 of the Fair Housing Act.

7 B. In an action brought by the attorney general
8 pursuant to Subparagraph (a) or (d) of Paragraph (1) or
9 Paragraph (2) of Subsection A of this section:

10 (1) that results in a money judgment for
11 damages, all damages shall be for the benefit of the complainant
12 or aggrieved person who was the subject of the discriminatory
13 practice; and

14 (2) any costs or other monetary relief awarded
15 shall be retained for the benefit of the commission.

16 C. In an action brought by the attorney general
17 pursuant to Subparagraph (a) or (d) of Paragraph (1) of
18 Subsection A of this section, upon timely application any person
19 may intervene in the action if the person has been harmed by the
20 discriminatory housing practice or is a party to the
21 conciliation agreement.

22 D. In actions brought by the attorney general
23 pursuant to the Fair Housing Act, venue for the action shall be
24 in the county where alleged discriminatory housing practice
25 occurred.

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1 Section 32. [NEW MATERIAL] PENDING CIVIL TRIAL--
2 CHARGE-- ADMINISTRATIVE HEARING. --The director shall not issue a
3 charge pursuant to the Fair Housing Act, and an administrative
4 hearing under the Fair Housing Act shall not continue, regarding
5 an alleged discriminatory housing practice after commencement of
6 the trial of civil action brought by the aggrieved party
7 pursuant to federal or state law seeking relief with respect to
8 the discriminatory housing practice or after an adjudication on
9 the merits in a court of record in which the aggrieved person
10 has sought relief with respect to such discriminatory housing
11 practice.

12 Section 33. [NEW MATERIAL] CIVIL ACTION. --

13 A. An aggrieved person may file a civil action in
14 district court not later than the second year after the
15 occurrence of the termination of an alleged discriminatory
16 housing practice, or the breach of a conciliation agreement
17 entered into pursuant to the Fair Housing Act, whichever occurs
18 later, to obtain appropriate relief with respect to the
19 discriminatory practice or breach.

20 B. The two-year period does not include any time
21 during which an investigation or an administrative hearing is
22 pending with respect to a complaint or charge pursuant to the
23 Fair Housing Act based on discriminatory housing practice. This
24 subsection does not apply to actions for breach of a
25 conciliation agreement or for enforcement of decisions of the

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1 commission.

2 C. An aggrieved person may file a civil action
3 pursuant to this section whether or not a complaint has been
4 filed pursuant to Section 17 of the Fair Housing Act and without
5 regard to the status of a complaint filed pursuant to that
6 section.

7 D. If the division has approved a conciliation
8 agreement on a complaint with the consent of an aggrieved
9 person, or if the commission had issued an award following an
10 administrative hearing arising out of the complaint, the
11 aggrieved person shall not file an action pursuant to this
12 section with respect to the alleged discriminatory housing
13 practice that formed the basis for the complaint except to
14 enforce the terms of the conciliation agreement or award.

15 E. An aggrieved person shall not file an action
16 pursuant to this section with respect to an alleged
17 discriminatory housing practice when the attorney general has
18 filed an action in the name of the state pursuant to Section 31
19 of the Fair Housing Act.

20 F. In an action pursuant to this section or
21 Paragraph (1) of Subsection A of Section 31 of the Fair Housing
22 Act, if the court finds that a discriminatory housing practice
23 has occurred or is about to occur, the court may award to the
24 plaintiff actual and punitive damages, reasonable attorney fees,
25 court costs and injunctive relief, including an order enjoining

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1 the defendant from engaging in the practice or ordering
2 appropriate affirmative action. Such relief shall not affect
3 the contract, sale, encumbrance or lease that was consummated
4 before the granting of the relief and involved a bona fide
5 purchaser, encumbrancer or tenant who did not have actual notice
6 of the filing of a complaint pursuant to the Fair Housing Act or
7 a civil action pursuant to this section.

8 Section 34. [NEW MATERIAL] LAND USE LAWS. -- If the
9 director determines that the subject matter of a complaint
10 involves the legality of a state or local zoning or other land
11 use law or ordinance, the director shall not issue a charge and
12 shall immediately refer the matter to the attorney general for
13 appropriate action.

14 Section 35. [NEW MATERIAL] COMMISSION ORDER. -- A final
15 administrative action made pursuant to the Fair Housing Act does
16 not affect a contract, sale, encumbrance or lease that was
17 consummated before the decision or award was made and that
18 involved a bona fide purchaser, encumbrancer or tenant who did
19 not have actual notice of the complaint that resulted in the
20 charge.

21 Section 36. Section 28-1-2 NMSA 1978 (being Laws 1969,
22 Chapter 196, Section 2, as amended) is amended to read:

23 "28-1-2. DEFINITIONS. -- As used in the Human Rights Act:

24 A. "person" means one or more individuals, a
25 partnership, association, organization, corporation, joint

1 venture, legal representative, trustees, receivers or the state
2 and all of its political subdivisions;

3 B. "employer" means any person employing four or
4 more persons and any person acting for an employer;

5 C. "commission" means the human rights commission;

6 D. "director" means the director of the human rights
7 division of the labor department;

8 E. "employee" means any person in the employ of an
9 employer or an applicant for employment;

10 F. "labor organization" means any organization
11 [which] that exists for the purpose in whole or in part of
12 collective bargaining or of dealing with employers concerning
13 grievances, terms or conditions of employment or of other mutual
14 aid or protection in connection with employment;

15 G. "employment agency" means any person regularly
16 undertaking with or without compensation to procure
17 opportunities to work or to procure, recruit or refer employees;

18 H. "public accommodation" means any establishment
19 that provides or offers its services, facilities, accommodations
20 or goods to the public, but does not include a bona fide private
21 club or other place or establishment [which] that is by its
22 nature and use distinctly private;

23 ~~I. "housing accommodation" means any building or~~
24 ~~portion of a building which is constructed or to be constructed,~~
25 ~~which is used or intended for use as the residence or sleeping~~

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1 ~~place of any individual;~~

2 ~~J. "real property" means lands, leaseholds or~~
3 ~~commercial or industrial buildings, whether constructed or to be~~
4 ~~constructed, offered for sale or rent, and any land rented or~~
5 ~~leased for the use, parking or storage of house trailers;~~

6 ~~K.]~~ I. "secretary" means the secretary of labor;

7 ~~[L.]~~ J. "unlawful discriminatory practices" means
8 those unlawful practices and acts specified in Section 28-1-7
9 NMSA 1978;

10 ~~[M.]~~ K. "physical or mental handicap" means a
11 physical or mental impairment that substantially limits one or
12 more of an individual's major life activities. An individual is
13 also considered to be physically or mentally handicapped if he
14 has a record of a physical or mental handicap or is regarded as
15 having a physical or mental handicap;

16 ~~[N.]~~ L. "major life activities" means functions such
17 as caring for one's self, performing manual tasks, walking,
18 seeing, hearing, speaking, breathing, learning and working; and

19 ~~[O.]~~ M. "applicant for employment" means a person
20 applying for a position as an employee. "

21 Section 37. Section 28-1-7 NMSA 1978 (being Laws 1969,
22 Chapter 196, Section 7, as amended) is amended to read:

23 "28-1-7. UNLAWFUL DISCRIMINATORY PRACTICE. --It is an
24 unlawful discriminatory practice for:

25 A. an employer, unless based on a bona fide

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1 occupational qualification, to refuse to hire, to discharge, to
2 promote or demote or to discriminate in matters of compensation,
3 terms, conditions or privileges of employment against any person
4 otherwise qualified because of race, age, religion, color,
5 national origin, ancestry, sex, physical or mental handicap or
6 serious medical condition; provided, however, that 29 U.S.C.
7 Section 631(c)(1) and (2) shall apply to discrimination based on
8 age;

9 B. a labor organization to exclude an individual or
10 to expel or otherwise discriminate against any of its members or
11 against any employer or employee because of age, race, religion,
12 color, national origin, ancestry, sex, physical or mental
13 handicap or serious medical condition;

14 C. any employer, labor organization or joint
15 apprenticeship committee to refuse to admit or employ any
16 individual in any program established to provide an
17 apprenticeship or other training or retraining because of age,
18 race, religion, color, national origin, ancestry, sex, physical
19 or mental handicap or serious medical condition;

20 D. any person, employer, employment agency or labor
21 organization to print or circulate or cause to be printed or
22 circulated any statement, advertisement or publication, to use
23 any form of application for employment or membership or to make
24 any inquiry regarding prospective membership or employment
25 [~~which~~] that expresses, directly or indirectly, any limitation,

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1 specification or discrimination as to age, race, color,
2 religion, national origin, ancestry, sex, physical or mental
3 handicap or serious medical condition unless based on a bona
4 fide occupational qualification;

5 E. an employment agency to refuse to list and
6 properly classify for employment or refer an individual for
7 employment in a known available job, for which the individual is
8 otherwise qualified, because of age, race, religion, color,
9 national origin, ancestry, sex or physical or mental handicap,
10 unless based on a bona fide occupational qualification, or to
11 comply with a request from an employer for referral of
12 applicants for employment if the request indicates either di-
13 rectly or indirectly that the employer discriminates in em-
14 ployment on the basis of age, race, religion, color, national
15 origin, ancestry, sex, physical or mental handicap or serious
16 medical condition unless based on a bona fide occupational
17 qualification;

18 F. any person in any public accommodation to make a
19 distinction, directly or indirectly, in offering or refusing to
20 offer its services, facilities, accommodations or goods to any
21 individual because of age, race, religion, color, national
22 origin, ancestry, sex or physical or mental handicap; [provided
23 that the physical or mental handicap is unrelated to an
24 individual's ability to acquire or rent and maintain particular
25 real property or housing accommodation;

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1 6. ~~any person to:~~

2 (1) ~~refuse to sell, rent, assign, lease or~~
3 ~~sublease or offer for sale, rental, lease, assignment or~~
4 ~~sublease any housing accommodation or real property to any~~
5 ~~individual or to refuse to negotiate for the sale, rental,~~
6 ~~lease, assignment or sublease of any housing accommodation or~~
7 ~~real property to any individual because of race, religion,~~
8 ~~color, national origin, ancestry, sex or physical or mental~~
9 ~~handicap, provided that the physical or mental handicap is~~
10 ~~unrelated to an individual's ability to acquire or rent and~~
11 ~~maintain particular real property or housing accommodation;~~

12 (2) ~~discriminate against any individual in the~~
13 ~~terms, conditions or privileges of the sale, rental, assignment,~~
14 ~~lease or sublease of any housing accommodation or real property~~
15 ~~or in the provision of facilities or services in connection~~
16 ~~therewith because of the race, religion, color, national origin,~~
17 ~~ancestry, sex or physical or mental handicap, provided that the~~
18 ~~physical or mental handicap is unrelated to an individual's~~
19 ~~ability to acquire or rent and maintain particular real property~~
20 ~~or housing accommodation; or~~

21 (3) ~~print, circulate, display or mail or cause~~
22 ~~to be printed, circulated, displayed or mailed any statement,~~
23 ~~advertisement, publication or sign or use any form of~~
24 ~~application for the purchase, rental, lease, assignment or~~
25 ~~sublease of any housing accommodation or real property or to~~

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1 ~~make any record or inquiry regarding the prospective purchase,~~
2 ~~rental, lease, assignment or sublease of any housing~~
3 ~~accommodation or real property which expresses any preference,~~
4 ~~limitation or discrimination as to race, religion, color,~~
5 ~~national origin, ancestry, sex or physical or mental handicap,~~
6 ~~provided that the physical or mental handicap is unrelated to an~~
7 ~~individual's ability to acquire or rent and maintain particular~~
8 ~~real property or housing accommodation;~~

9 H.] G. any person to whom application is made
10 ~~[either for financial assistance for the acquisition,~~
11 ~~construction, rehabilitation, repair or maintenance of any~~
12 ~~housing accommodation or real property or]~~ for any type of
13 consumer credit, including financial assistance for the
14 acquisition of any consumer good as defined by Section 55-9-109
15 NMSA 1978, to:

16 (1) consider the age, race, religion, color,
17 national origin, ancestry, sex or physical or mental handicap of
18 any individual in the granting, withholding, extending,
19 modifying or renewing or in the fixing of the rates, terms,
20 conditions or provisions of any financial assistance or in the
21 extension of services in connection with the request for
22 financial assistance; or

23 (2) use any form of application for financial
24 assistance or to ~~make~~ any record or inquiry in connection with
25 applications for financial assistance [~~which~~] that expresses,

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1 directly or indirectly, any limitation, specification or
2 discrimination as to age, race, religion, color, national
3 origin, ancestry, sex or physical or mental handicap;

4 [~~H.~~] H. any person or employer to:

5 (1) aid, abet, incite, compel or coerce the
6 doing of any unlawful discriminatory practice or to attempt to
7 do so;

8 (2) engage in any form of threats, reprisal or
9 discrimination against any person who has opposed any unlawful
10 discriminatory practice or has filed a complaint, testified or
11 participated in any proceeding under the Human Rights Act; or

12 (3) willfully obstruct or prevent any person
13 from complying with the provisions of the Human Rights Act or to
14 resist, prevent, impede or interfere with the commission or any
15 of its members, staff or representatives in the performance of
16 their duties under the Human Rights Act; or

17 [~~J.~~] I. any employer to refuse or fail to
18 accommodate to an individual's physical or mental handicap or
19 serious medical condition, unless such accommodation is
20 unreasonable or an undue hardship. "

21 Section 38. Section 28-1-9 NMSA 1978 (being Laws 1969,
22 Chapter 196, Section 8, as amended) is amended to read:

23 "28-1-9. EXEMPTIONS. -- Nothing contained in the Human
24 Rights Act shall:

25 [~~A. apply to any single family dwelling sold,~~

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1 ~~leased, subleased or rented by an owner without the making of~~
2 ~~any notice, statement or advertisement with respect to the sale,~~
3 ~~lease, sublease or rental of a dwelling unit that indicates any~~
4 ~~preference, limitation or discrimination based on race, color,~~
5 ~~religion, national origin, ancestry or sex. This exemption is~~
6 ~~subject to these further reservations:~~

7 ~~(1) to qualify for the exemption, the seller~~
8 ~~must not be an owner of or own or have reserved any interest in~~
9 ~~more than three single-family dwellings; and~~

10 ~~(2) if the seller doesn't presently live in the~~
11 ~~dwelling or he was not the most recent occupant, then the~~
12 ~~exemption granted in this section will only apply to one sale in~~
13 ~~twenty-four months;~~

14 ~~B.]~~ A. bar any religious or denominational
15 institution or organization [~~which~~] that is operated, [~~or~~]
16 supervised or controlled by or is operated in connection with a
17 religious or denominational organization from limiting admission
18 to or giving preference to persons of the same religion or
19 denomination [~~or from making selections of buyers, lessees or~~
20 ~~tenants~~] as are calculated by the organization or denomination
21 to promote the religious or denominational principles for which
22 it is established or maintained, unless membership in the
23 religious or denominational organization is restricted on
24 account of race, color, national origin or ancestry;

25 ~~[C. apply to rooms or units in dwellings containing~~

